UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte RANDOLPH A. STERN
and
MICHAEL N. BYLES

Appeal No. 2005-0019
Application No. 09/558,329[1]

ON BRIEF

Before KRATZ, TIMM, and POTEATE, *Administrative Patent Judges.*
TIMM, *Administrative Patent Judge.*

RESPONSE TO REQUEST FOR REHEARING

Appellants request rehearing[2] of our Decision on Appeal dated January 19, 2005. In that Decision we affirmed with regard to the Examiner's rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

In the Brief and Reply Brief, Appellants maintained one overarching argument with respect to all the rejections over prior art. That argument centered on the interpretation of "yarn face" in the

[1]Application for Reissue of U.S. Patent 5,902,757.

[2]Request for Rehearing filed on February 3, 2005.

claims. Each of the claims includes a "yarn face" which overlies a felt layer. Appellants interpreted a "yarn face" as "having very closely spaced or densely packed segments of the stitch bonding yarns so as to be effectively continuous such that the felt web is not generally exposed." (Brief, p. 15). The Examiner determined that the claims are not limited to "continuous" or "effectively continuous" yarn faces (Answer, pp. 25-26). In our Decision, we concluded that the Examiner's interpretation was reasonable (Decision, pp. 10-11).

Appellants do not argue that we erred in our Decision, rather, they solicit from us a new decision, or an amended decision, with an express statement as to whether a claim amendment reciting "effectively continuous yarn face" would overcome the specific prior art rejections. As pointed out by Appellants (Request, p. 3), we have the authority to make such a statement under 37 CFR § 41.50(c)(eff. September 13, 2004). We declined to execute that authority at the time of our Decision and we continue to decline to execute that authority now.

To the extent that Appellants continue to argue that their claims are limited to articles with "effectively continuous yarn faces" we remain unconvinced for the reasons provided in our Decision. Moreover, even if we had determined that the claims were so limited, we could not agree that all of the rejections would be overcome, particularly in view of the teachings of Ott.

The subject request has been granted to the extent that our decision has been reconsidered, but is denied with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

REHEARING DENIED

PETER F. KRATZ
Administrative Patent Judge

CATHERINE TIMM
Administrative Patent Judge

LINDA R. POTEATE
Administrative Patent Judge

) BOARD OF PATENT
) APPEALS
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